

Notice of Allowability

Application No.

10/718,050

Examiner

Patricia L. Hailey

Applicant(s)

GILLESPIE ET AL.

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to an Amendment filed on January 17, 2005.
2. ☒ The allowed claim(s) is/are 1, 3-5, and 10-23.
3. ☒ The drawings filed on 20 November 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 01/17/05; 11/20/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Applicants' remarks and amendments, filed on January 17, 2005, have been carefully considered. Claims 2 and 6-9 have been canceled; no new claims have been added.

Claims 1, 3-5, and 10-23 remain pending in this application.

Support for the amendments to claim 1 can be found in claim 2 as originally filed.

Withdrawn Rejections

The provisional obviousness-type rejection of claims 1-8 and 10-13 as being unpatentable over claims 1-11 of copending Application Serial No. 10/872,581, stated in the previous Office Action, has been withdrawn in view of Applicants' cancellation of claims 2 and 6-9.

The 101 rejection of claims 1-13 for claiming the same invention as that of claims 1-26 of prior U. S. Patent No. 6,706,659, stated in the previous Office Action, has been withdrawn in view of Applicants' cancellation of claims 6-9.

The 102(e) rejection of claims 1, 4, 5, 9-11, and 13 as being anticipated by Nemeth et al. (U. S. Patent No. 6,359,179), has been withdrawn in view of Applicants' amendment to claim 1 (by incorporating therein the subject matter of claim 2), and of Applicants' cancellation of claim 9.

The 103(a) rejection of claims 2, 3, 12, and 14-23 as being unpatentable over Nemeth et al. (U. S. Patent No. 6,359,179) has been withdrawn in view of

Applicants' cancellation of claim 2, and in view of Applicants' persuasive arguments regarding this reference and its common ownership at the time of the filing of the instant application. Applicants' state that this reference "does not preclude patentability of applicants' invention under 35 USC 103(a)." It appears that Applicants' meant to recite 35 USC 103(c), as a submission of evidence of common ownership would not preclude patentability under 35 USC 103(a).

Allowable Subject Matter

1. Claims 1, 3-5, and 10-23 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Hailey whose telephone number is (571) 272-1369. The examiner can normally be reached on Mondays-Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 1700 Receptionist, whose telephone number is (571) 272-1700.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patricia L. Hailey/plh

Examiner, Art Unit 1755

March 7, 2005


J.A. LORENGO
PRIMARY EXAMINER